

City of San Diego
RULES FOR AWARDING CONTRACTS FOR SERVICES OVER \$50,000

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RULES FOR AWARDING CONTRACTS FOR SERVICES OVER \$50,000

The purpose of these Rules for Awarding Contracts for Services over \$50,000 [Rules] is to specify and provide standards and procedures for determining that *bidders* and contractors have the capability to fully perform contract requirements and the business integrity to justify the award of public tax dollars, as required by San Diego Municipal Code § 22.3224 [Ordinance].

A. DEFINITIONS

For purposes of these Rules, the terms and definitions set forth in SDMC § 22.3003 are incorporated herein by reference.

“Contractor Standards Questionnaire,” as used in these Rules, means the set of questions developed by the Purchasing Agent to assist the City in determining whether *bidders* and contractors meet the requirements of the Ordinance. The *Contractor Standards Questionnaire* solicits information including the following: ownership and name changes, financial resources and responsibility, performance of other contracts, record of compliance with relevant laws and regulations, and satisfactory record of business integrity.

The *Contractor Standards Questionnaire* includes an acknowledgement that the *bidder* or contractor agrees, under penalty of perjury, to the following requirements:

- (a) Comply with all applicable State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- (b) Notify the Purchasing Agent within fifteen (15) calendar days upon receiving notification that a government agency has begun an investigation of the *bidder* or contractor that may result in a finding that the *bidder* or contractor is or was not in compliance with laws stated in paragraph (a).
- (c) Notify the Purchasing Agent within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the *bidder* or contractor of laws stated in paragraph (a).
- (d) Provide the Purchasing Agent updated responses to the *Contractor Standards Questionnaire* within thirty (30) calendar days of any event, occurrence, or circumstance that changes those responses.
- (e) Notify the Purchasing Agent within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).

- (f) Cooperate fully with the Purchasing Agent and the City during any investigation and respond to a request for information within ten (10) business days from the request date.

“Invitations for Bids,” as used in these Rules, include Requests for Bids (RFBs), Requests for Proposals (RFPs), and Requests for Quotations (RFQs).

B. INVITATIONS FOR BIDS

1. Issuance of Invitation for Bids: The City shall include the following in all *Invitations for Bids* unless the proposed contract is exempt from the Ordinance:

- a. Language informing potential *bidders* of the Ordinance; and
- b. The *Contractor Standards Questionnaire* for *bidders* to submit with their bid.

2. Bid Submissions:

- a. All bids for proposed contracts subject to the Ordinance are required to include a completed and signed *Contractor Standards Questionnaire*. Failure to submit a *Contractor Standards Questionnaire* shall make the *bidder* non-responsive and disqualified from the bidding process.
- b. *Bidders* shall submit with their bid a list of proposed subcontractors, which will also be available for public review.
- c. *Bidders* shall submit to the City a *Contractor Standards Questionnaire* completed and signed by a subcontractor who will perform more than fifty percent (50%) of the work of the contract. The City will determine the subcontractor’s responsibility prior to execution of the contract.
- d. Upon receipt by the City, submitted *Contractor Standards Questionnaires* become public records and subject to public review, except to the extent information contained therein is exempt from disclosure pursuant to applicable law.
- e. The *Contractor Standards Questionnaire* of all *bidders* will be retained by the City as part of the contract file.

3. Use of a Non-competitive Process to Procure the Proposed Contract. If the City uses a non-competitive process to procure the proposed contract, the prospective contractor is required to submit a completed *Contractor Standards Questionnaire* to the City for determination of the contractor’s responsibility prior to execution of the contract.

C. AWARD AND EXECUTION OF CONTRACTS

1. **Responsiveness.** As part of the determination of a *bidder's* responsiveness, the City will review the bid submissions to determine whether a completed *Contractor Standards Questionnaire*, signed under penalty of perjury, has been included with the bid. If a completed *Contractor Standards Questionnaire* has not been included, the *bidder* shall be deemed to be non-responsive and disqualified from the bidding process.
2. ***Contractor Standards Questionnaire Available for Public Review.*** A Requesting Department will forward to the Purchasing Agent all completed *Contractor Standards Questionnaires* submitted by responsive *bidders*, which will be available for public review.
 - a. If a contract is to be awarded pursuant to a competitive Request for Bid process, the *Contractor Standards Questionnaire* for the three lowest responsive *bidders* and their lists of proposed subcontractors, if any, will be available for public review for at least ten (10) calendar days.
 - b. If a contract is to be awarded pursuant to a Request for Proposal or Request for Qualifications process and award is not based on the lowest submitted bid price, the *Contractor Standards Questionnaires* for the short-listed *bidders* and their lists of proposed subcontractors, if any, will be made available for public review for at least ten (10) calendar days. If no short-listing procedure is used, the *Contractor Standards Questionnaire* for the prospective contractor will be available for public review for at least ten (10) calendar days.
3. **Determination of Responsibility.** The Purchasing Agent shall determine whether a *bidder* or contractor is *responsible*. In determining whether the *bidder* or contractor has the necessary quality, fitness and capacity to perform the work set forth in the proposed contract, the Purchasing Agent shall consider the following:
 - a. Responses to the *Contractor Standards Questionnaire*;
 - b. Results of any investigation by the City of the *bidder's* or contractor's *responsibility*; and
 - c. Information from any compliance or regulatory governmental agency.
4. **Requirements Prior to Contract Award or Execution.** The City may not award or execute a contract with a *bidder* or contractor if:
 - a. The *bidder's* or contractor's *Contractor Standards Questionnaire* has not been available for public review for at least ten (10) calendar days;
 - b. The City is investigating the *bidder's* or contractor's responsibility;

- c. The *bidder* or contractor has been found to be non-*responsible*;
- d. The *bidder* or contractor appears on any City list of debarred *bidders* or contractors; and
- e. The *bidder* or contractor has not met all other applicable City requirements.

5. Subcontractor Responsibility.

- a. Contractors shall ensure that all their subcontractors meet the criteria for *responsibility* set forth in the Ordinance and these Rules.
- b. Contractors shall not use in any capacity any subcontractor determined to be non-*responsible* by the City.
- c. Subject to written approval by the City, contractors may substitute a non-*responsible* subcontractor with another subcontractor with no changes in bid amounts.

6. Execution of Contracts: Unless otherwise exempt from the Ordinance, all contracts shall contain language obligating the contractor to comply with the Ordinance.

D. CONTRACT AMENDMENTS

- 1. Ordinance Language.** Unless otherwise exempt from the Ordinance, all contract amendments shall contain language obligating the contractor to comply with the Ordinance.
- 2. Questionnaire Required.** A contractor subject to the Ordinance because of an amendment shall submit a completed and signed *Contractor Standards Questionnaire* to the City before the contract amendment can be executed.
- 3. Contract Executed Prior to Effective Date of Ordinance.** For contracts that were executed prior to the effective date of the Ordinance, the contractor must comply with the Ordinance and these Rules before any contract amendment can be executed.
- 4. Increase to Initial Contract.** If a contract amendment results in the contract exceeding \$50,000 in value, the contractor must comply with the Ordinance and these Rules before the contract amendment can be executed.

E. INVESTIGATION NOTIFICATION AND QUESTIONNAIRE UPDATE REQUIREMENTS

- 1. Notification of Investigations.** Contractors shall:

- a. Notify the Purchasing Agent within fifteen (15) calendar days after receiving notification that a government agency has begun an investigation of the contractor that may result in a finding that the contractor is or was not in compliance with any applicable State or Federal law, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- b. Notify the Purchasing Agent within fifteen (15) calendar days of receiving notice that there has been a finding by a government agency or court of competent jurisdiction of a violation by the contractor of applicable State or Federal law, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- c. Notify the Purchasing Agent within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of applicable State or Federal law, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.

2. Update of *Contractor Standards Questionnaire* Information:

- a. The contractor shall update its responses to the *Contractor Standards Questionnaire* within thirty (30) calendar days of any event, occurrence, or circumstance that changes those responses.
- b. If the Purchasing Agent becomes aware of new information concerning a contractor and determines the contractor should have provided the new information to the City, but failed to do so, the Purchasing Agent shall issue a written notice to the contractor requiring the contractor to submit the new information within ten (10) calendar days.
- c. The contractor's failure to provide information or updated information when required by the City, the Ordinance or these Rules may be considered a material breach of the contract, and the City may exercise its legal rights, including termination of the contract.

3. Contractors Responsible for Subcontractor Information. Contractors shall ensure that subcontractors abide by these notification and updating requirements. Contractors shall:

- a. Notify the Purchasing Agent within fifteen (15) calendar days after receiving notification that a government agency has begun an investigation of the subcontractor that may result in a finding that the subcontractor is or was not in compliance with any applicable State or Federal law, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- b. Notify the Purchasing Agent within fifteen (15) calendar days of receiving notice that there has been a finding by a government agency or court of competent jurisdiction of

a violation by the subcontractor of applicable State or Federal law, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.

- c. For a subcontractor who performs more than fifty percent (50%) of the work, update the subcontractor's responses to the *Contractor Standards Questionnaire* within thirty (30) calendar days of any event, occurrence, or circumstance that changes those responses.
- d. Submit requested information to the Purchasing Agent within ten (10) calendar days of receipt of written notice that the Purchasing Agent has become aware of new information concerning a subcontractor and has determined the subcontractor should have provided the new information, but failed to do so.

F. INVESTIGATION OF NON-RESPONSIBILITY

1. Complaints of non-responsibility. Complaints that a *bidder* or contractor is non-*responsible* must be submitted to the Purchasing Agent in writing. However, the Purchasing Agent may investigate a *bidder* or contractor's *responsibility* whether or not a complaint has been submitted in writing.

2. Investigation Process:

- a. Upon initiation of an investigation, the Purchasing Agent shall provide written notice of the investigation to the *bidder* or contractor, the complainant, and the Requesting Department. The notice to the Requesting Department will also indicate that no contract shall be awarded to the *bidder* or contractor until the conclusion of the investigation.
- b. As part of its investigation, the Purchasing Agent shall gather necessary facts and documentation as well as conduct interviews of the complainant if necessary. The Purchasing Agent may also require the *bidder* or contractor to respond to the complaint. Where a subcontractor is the subject of the investigation, the contractor shall obtain and submit to the City the required response. To the extent practicable, the City shall maintain the confidentiality of all individuals participating in the investigation.
- c. At the conclusion of the investigation, the Purchasing Agent shall prepare a written report of its findings and provide written notice of those findings to the *bidder* or contractor, the complainant, and the Requesting Department. If the City determines the *bidder* or contractor to be non-*responsible*, the City shall provide written notice to the *bidder* or contractor in accordance with San Diego City Council Policy [Council Policy] No. 000-29.
- d. Neither an employer nor an employer's representative shall take any action against an

individual in retaliation for providing information towards or cooperating in an investigation of a *bidder's* or contractor's *non-responsibility*. If an employee is terminated, demoted, or otherwise penalized by an employer or employer's representative within sixty (60) days of providing information towards or cooperating in an investigation of a *bidder's* or contractor's *non-responsibility*, a rebuttable presumption shall arise that the action was taken in retaliation for the employee's participation and shall be considered a violation of these Rules.

G. PROTEST OF AWARD OR DETERMINATION OF NON-RESPONSIBILITY

- 1. Procedure; Hearing.** SDMC § 22.3029 and Council Policy No. 000-29 set forth the procedures for (i) initiating protests of contract awards and determinations that a *bidder* or contractor is *non-responsible*, and (ii) the procedures for conducting protest hearings.
- 2. Finality of Determination of Non-responsibility.** The City's determination after an investigation and a protest hearing, if one is required, that a *bidder* or contractor is *non-responsible* is final and shall constitute exhaustion of administrative remedies.

H. NON-RESPONSIBILITY SANCTIONS

- 1. Bidder:** A *bidder* whom the City finds *non-responsible* shall be disqualified from participating in the proposed bid. Such *bidder* shall not perform any work in the proposed contract, whether as a prime contractor, a subcontractor, a partner in a partnership, a participant in a joint venture, a member of a consortium, or in any other capacity.
- 2. Contractor:** A contractor whom the City finds *non-responsible* may be declared to be in material breach of contract, and the City may exercise its contractual and legal rights, including termination of the contract.
- 3. Listing:** The Purchasing Agent shall maintain a list of firms who have been determined to be *non-responsible*.

I. EXEMPT CONTRACTS

- 1. Categorical Exemptions:** The following types of contracts are categorically exempt from the Ordinance and these Rules:
 - a. Contracts with a governmental entity, including the United States of America, the State of California, a county, city or public agency of such entities, or a public or quasi-public corporation located therein and declared by law to have such status.
 - b. Contracts for the investment of trust moneys or agreements relating to the management of trust assets.

- c. Banking contracts entered into by the City Treasurer pursuant to California Government Code § 53630 et seq.

2. Discretionary Exemptions: The Purchasing Agent may exempt contracts from the Ordinance and these Rules upon a finding that those contracts meet any of the following conditions:

- a. Contracts awarded on the basis of exigent circumstances when the Purchasing Agent finds the City would suffer financial loss or operations would be adversely impacted.
- b. Contracts for services that are proprietary or available from only one source.
- c. Contracts for repairs, alterations, or work improvements entered into based on urgent necessity for the preservation of life, health or property.
- d. Contracts entered into during time of war or emergency.
- e. Contracts for equipment repairs or parts obtained from the exclusive manufacturer.
- f. Cooperative agreements with other governmental agencies.

J. EFFECTIVE DATE

These Rules shall take effect ninety (90) days after the date of adoption by the City Council of the Ordinance, May 24, 2005.

K. CONSISTENCY WITH FEDERAL AND STATE LAW

The Ordinance and these Rules do not apply in instances where application would be prohibited by Federal or State law or where application would violate or be inconsistent with the terms and conditions of a grant or contract with a Federal or State agency.

L. SEVERABILITY

If any provision of the Ordinance or these Rules is found to be legally invalid by any court of competent jurisdiction, the remaining provisions remain in full force and effect.